

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

LINDA CALVO,  
Plaintiff,

v.

ANTONIO S. CALVO,  
Defendant,

§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO.: 1:20-cv-766

---

**DEFENDANT’S NOTICE OF REMOVAL**

---

Now Comes Defendant Antonio S. Calvo (“Defendant”) and files this Petition for Removal and respectfully shows this Court the following:

**STATEMENT OF THE CASE**

1. This removal is pursuant to 28 U.S.C. §1332(a), 1441, and 1446. Plaintiff Linda Calvo (“Plaintiff”) sued Defendant praying for Declaratory Relief, Accounting, and Attorney’s Fees. Because there is complete diversity and the amount in controversy is well in excess of \$75,000, this Court has diversity jurisdiction and removal is proper. 28 U.S.C. § 1331; *id.* § 1441(a).

2. Plaintiff is a citizen and resident of New York. The parties were formerly married and were divorced in 2012. However, the parties have remained financially entangled which is the but for cause of this particular dispute.

3. Defendant is a citizen and resident of the State of Texas.

4. On June 22, 2020 Plaintiff filed an Original Petition and Request for Disclosure in Travis County District Court styled Linda Calvo v. Antonio Calvo Cause No. D-1-GN-20-003287

(the “State Court Action”). A copy of the Complaint is attached as **Exhibit A** hereto.

5. Defendant was served on June 24, 2020.

6. The Petition purports to assert two causes of action including (a) Declaratory Relief & Accounting; and (b) Attorney’s Fees and Costs. The Plaintiff’s claims are all predicated on an alleged oral commitment to indemnify.

7. Plaintiff purports to bring each claim solely on behalf of herself.

8. The relief Plaintiff seeks is according her Petition: “millions of dollars of funds.” *See* Exhibit A (paragraphs 7, 10, 11, and 12 of the Original Petition)

**DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)**

9. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a), because there is a complete diversity of citizenship between Plaintiff and Defendant and more than \$75,000, exclusive of interest and costs, is at stake.

10. Plaintiff has plead that she is a resident of the State of New York and that her primary residence is New York City.

11. Defendant is a citizen and resident of the Sate of Texas.

12. The Plaintiff seeks declaratory relief which according to her own petition is “millions of dollars.”

**ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED**

13. A copy of all process, pleadings, and orders served upon, or by, Defendants in the state court suit are being filed with this notice as required by 28 U.S.C. § 1446(a)

14. This Notice of Removal has been filed within 30 days of the date that the Defendant was served with the Petition in this matter. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the U.S. District Court for the Western District of Texas is the federal judicial district embracing the Travis County District Court where the State Court Action was originally filed.

16. Defendants will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

### **CONCLUSION**

By this Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction, or venue, or any other defenses or objections it may have to this action. Defendant intends no admission of fact, law or liability by this Notice, and expressly reserves all defenses, motions and/or pleas.

### **PRAYER**

ACCORDINGLY, Defendants pray that this cause be removed to the United States District Court for the Western District of Texas, Austin Division, pursuant to §1441 of Title 28 of the United States Code.

*/s/ David K. Sergi*\_\_\_\_\_

**David K. Sergi**

Texas Bar No. 18036000

e-mail: [david@sergilaw.com](mailto:david@sergilaw.com)

Attorney In Charge

*/s/ Thomas M. Just*\_\_\_\_\_

Thomas M. Just

Texas Bar No. 24113382

e-mail: [thomas@sergilaw.com](mailto:thomas@sergilaw.com)

Sergi & Associates

329 S. Guadalupe St.  
San Marcos, TX 78666  
(512) 392-5010  
FAX: (512) 392-5042

*ATTORNEYS FOR DEFENDANTS*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendants' Notice of Removal served through CM/ECF filing, on July 20, 2020, to:

Daniel H. Byrne  
Philip W. Rodgers  
FRITZ, BYRNE, HEAD &  
GILSTRAP, PLLC  
221 WEST 6<sup>TH</sup> STREET,  
SUITE 960  
AUSTIN, TX 78701  
[dbyrne@fbhg.law](mailto:dbyrne@fbhg.law)  
[prodgers@fbhg.law](mailto:prodgers@fbhg.law)

*ATTORNEYS FOR PLAINTIFF*

/s/ Thomas M. Just \_\_\_\_\_  
**Thomas M. Just**